First, the intra-island operations of PRTC are effectively unregulated since the only entity with any oversight responsibility is also PRTA, who is PRTC's parent.[49] PRTA's decisions are not even subject to legislative veto.[50]

Second, PRTC claims and enforces a statutory monopoly over all intra-island telecommunications.[51] As a result, PRTC believes that it has a statutory right to engage in anticompetitive behavior with respect to potential competitors. PRTC is able to behave in this manner without fear of repercussion because there is no regulatory forum with remedial powers. By exempting PRTC from expanded interconnection obligations with respect to interstate access services, the Commission allows PRTC to carry out this anticompetitive behavior at the interstate level.

Third, PRTA has the authority to issue fully tax-free municipal bonds on behalf of PRTC.[52] Indeed, at PRTA's request, the Puerto Rico Government Development Bank ("GDB") orchestrated the issuance of bonds during the 1993-1994 fiscal years in amounts "over $700 million for the Puerto Rico Telephone Company, reducing the annual debt service requirement by more than $75 million per

---

[49] 27 L.P.R.A. § 403.

[50] 27 L.P.R.A. § 410. See also Puerto Rico Telephone Authority, *Bond Prospectus*, Series M and N ("Bond Prospectus") (March 25, 1993) at 3, and Act No. 21 of the Legislative of Puerto Rico (approved May 31, 1995).

[51] 27 L.P.R.A. § 402, 407(g).

[52] 27 L.P.R.A. § 413.

year."[53] Fourth, PRTA has access to low-interest financing from the GDB. In 1990, the PRTA received over $100 million in low-interest loans from the GDB to fund the acquisition of the Puerto Rico Communications Authority.[54] Fifth, PRTC has the power of condemnation with respect to real property in Puerto Rico.[55] These advantages undermine PRTC's poverty plea.

IV. ELIMINATION OF PRTC'S EXCLUSION FROM THE EXPANDED INTERCONNECTION OBLIGATIONS APPLICABLE TO ALL OTHER TIER 1 LECS WOULD NOT UNDERMINE ATTAINMENT OF THE COMMISSION'S UNIVERSAL SERVICE GOALS AND WOULD PROVIDE PRTC WITH INCENTIVES TO IMPROVE ITS OPERATING EFFICIENCY

As described herein, PRTC does not suffer from economic disadvantages unique among Tier 1 LECs such that it is necessary or appropriate to exempt PRTC from the expanded interconnection requirements. In fact, PRTC is a large, growing, and economically prosperous company which has been able to capitalize on the advantages of government ownership and favorable regulation to grow and diversify its business and to modernize its network. Moreover, inclusion of PRTC among the LECs subject to expanded interconnection obligations, and the access service competition which will result therefrom, will provide much needed incentives to PRTC to improve its own operating efficiency. Such improved

---

[53] Institutional Investor, A Special Sponsored Section; "Government Development Bank; Leading the Privatization Effort", (June, 1995), at S7.

[54] Bond Prospectus at 12-13.

[55] 27 L.P.R.A. § 415.

efficiency can be expected to enable PRTC to provide local service to Puerto Rico's telephone consumers at rates closer to the national average and to increase telephone subscribership levels, thereby promoting universal service. Although achievement of universal service in Puerto Rico has presented special challenges, actual universal service can best be met through the various Commission rules and policies directed at achieving that objective rather than through continuation of a wholly-unwarranted exclusion from the pro-competitive expanded interconnection requirements.

A. Telephone Service Rates in Puerto Rico are Higher than the National Average

Local telephone service rates in Puerto Rico are high, both for residential and business service. PRTC offers several local service options which consist of unlimited calling and/or limited amounts of calling charges for additional "units." The unlimited calling rate for PRTC's customers in the San Juan metropolitan area is $18.80 per month -- **forty-two percent higher than the national average rate** for unlimited local residential calling.[56] Even the least expensive rate ($7.25 per month with 70 local calling units) is **fourteen percent above the nationwide average** before factoring in the additional units that would be required for even a modest

[56] See 1995 PRTC Guia Commercial and Residentia (PRTC Business and Residential Telephone Directory). A local call unit is a per call charge within the seven municipalities which comprise the greater San Juan metropolitan area. The San Juan municipality is divided into six calling zones; calls between zones are subject to a one- or two-unit charge of $.13 per unit with most local calls requiring two units. Id.

number of local calls.[57] PRTC's business rate is $23.05 per month with 85 units.[58] Assuming that a business consumer would require 300 to 400 units in order to place 200 calls per month,[59] monthly local service would cost approximately $57.50[60] That amount too is well above (11 percent) the national average. These local rates produce annual local service revenue per access line of $387, far higher than the industry average and 30 to 68 percent higher than the local revenue per access line of comparably-sized LECs.[61]

B. PRTC's High Rates Do Not Appear To Be Driven By Unavoidably High Costs; Rather They Appear To Be Caused In Large Part By PRTC's Own Inefficiency

A commonly-recognized barometer of unavoidable local exchange carrier service costs is unseparated non-traffic (NTS) revenue requirement per loop. That is the cost measure utilized by the Commission in its rules for measuring LEC eligibility for Universal Service Fund high cost assistance.[62] According to the most recent data available, Puerto Rico's island-wide unseparated NTS revenue requirement per loop during 1993 was $334.83.[63]

---

[57] Id.

[58] Id.

[59] Some local calls require one unit; others require two units.

[60] Based on purchase of 265 units at $0.13 per unit, plus monthly charge of $23.05 with 85 units included.

[61] See Appendix 1.

[62] See 47 C.F.R. subpart F (36.601 *et seq.*).

[63] Monitoring Report at Table 3.9.

While that unseparated NTS revenue requirement per loop is high, it is not uniquely high. Indeed, it is lower than the statewide average unseparated NTS revenue requirement per loop of seven jurisdictions.[64] In fact, no fewer than fifteen LECs serving more than 100,000 access lines within each of their study areas, including five Bell Operating Companies ("BOCs") and seven GTE telephone companies, have higher unseparated NTS revenue requirements per loop than PRTC. Notwithstanding those unavoidably high costs, every one of those BOCs and GTE companies (as well as the Sprint telephone companies -- formerly United and Central, two of whom serve more than 100,000 lines and have higher unseparated loop costs than PRTC) are subject to the Commission's expanded interconnection requirements.

In no other jurisdiction has either the level of telephone penetration, the costs of providing service, or the average rates for service, been used to justify exclusion of any Tier 1 LEC from the Commission's pro-competitive expanded interconnection obligations, nor should they warrant such exclusion. Although Puerto Rico's telephone service penetration level remains below the national average, there is no basis for concluding that continued protection of PRTC from competition and the corresponding denial to

[64]Those states and the statewide unseparated revenue requirement per loop are Alaska ($386.02), Arkansas ($335.81), Mississippi ($343.26), South Carolina ($354.00), Vermont ($378.66), West Virginia ($357.66), and Wyoming ($361.79). In addition, an eighth state -- New Hampshire -- has an unseparated NTS revenue requirement per loop of $332.18 -- less than one percent below Puerto Rico's. Monitoring Report at Table 3.3.

Puerto Rico's consumers of the benefits of access competition will raise Puerto Rico's telephone penetration level.

The evidence of PRTC's inefficiency could not be more striking. As shown in Appendix 1, PRTC lags far behind the industry average and most comparably-sized LECs in such commonly accepted indicia of efficiency as access lines per employee or operating revenues per employee or operating expense per access line. PRTC has only 142 access lines per full-time employee, which is considerably less than half the average for all LECs (339 access lines per full-time employee).[65] Moreover, PRTC's operating revenues per full-time employee are $122,000, which is much lower than the LEC average of $200,000.[66] Finally, PRTC's operating expense per access line is $661, which is considerably higher than the LEC average of $445.[67] Considering the extraordinarily high population density and urbanized nature of Puerto Rico, PRTC's access lines per full-time employee (or full-time employees per 1,000 access lines) and its operating revenues per full-time employee should be higher, and conversely its operating expense per access line should be lower, than those of LECs serving less

---

[65] Preliminary Statistics of Communications Common Carriers at Tables 2.9 and 2.10. Stated conversely, the evidence of inefficiency is just as stark. PRTC has approximately seven full-time employees per 1,000 access lines compared to an overall LEC average of approximately three full-time employees per 1,000 access lines. Id.

[66] Id.

[67] Id.

urbanized and less densely populated states. That is simply not the case.

Three of the four LECs included in Appendix 1 that serve the majority of the land area within their states (i.e., Bell Atlantic-NJ, Bell Atlantic-WV, SNET and GTE-HI)[68] are far more efficient than PRTC in terms of operating revenue per employee, access lines per employee and operating expense per employee. Only GTE-HI has a slightly higher operating expense per employee, which is to be expected considering that GTE serves a series of islands, rather than a single contiguous land area. With that exception, PRTC's operating revenue per employee ranges from 24 percent lower than SNET's to 54 percent lower than Bell Atlantic-WV's.[69] Its operating expense per access line (excluding Hawaii) ranges from 21 percent higher than SNET's to 53 percent higher than Bell Atlantic-NJ's.[70] And its access lines per employee ranges from 36 percent lower than GTE-HI's to 65 percent lower than Bell Atlantic-NJ's.[71]

PRTC seeks to excuse its inefficiency by claiming that it is the island's predominantly rural nature that makes it subject to high costs per loop. The truth is otherwise. As discussed supra, the island is neither primarily rural nor sparsely populated.

---

[68]NTIA, Telephone Areas Serviced by Bell and Independent Companies in the United States, NTIA Rep. No. 82-97 (February 1982).

[69]West Virginia is only 36.1 percent urbanized, compared with Puerto Rico's 71.2 percent. Statistical Abstract at 43, 833.

[70]See Appendix 1.

[71]Id.

PRTC's high cost per loop is a function of its own inefficiency. There is nothing so unusual about Puerto Rico that justifies such a high cost per loop. Note that even PRTC itself admits that much needs to be done to improve its efficiency.[72]

Faced with the potential loss of access traffic to competitors like Lambda, PRTC, like all other Tier 1 LECs which similarly have faced the challenges brought about by competition, will begin to make personnel, network and other decisions that improve its own operating efficiency. Only by becoming more efficient will PRTC be able to respond to competition by reducing its prices and improving its services.

Ultimately, PRTC's rates for local service will be reduced and telephone penetration in Puerto Rico will be increased not by continued regulatory protection from competition, but from improved efficiency of PRTC's operations brought about by competition.

[72]According to PRTC, it "is improving its customer service and increasing employee productivity. The ratio of employees per 1,000 access lines has fallen from 8.6 in 1990 to 6.1 in 1994 and is expected to be close to the industry average of 4 employees per 1,000 access lines in the near future." Although its numbers are incorrect in that PRTC understates its employees per access line figure (by inflating the number of access lines by 196,832 more access lines than reported to the Commission) and overstates the industry average, the fact remains that by lowering its costs, it is clear that PRTC's high costs are not a product of circumstances beyond its control. Institutional Investor Special Sponsored Section; "PRTC; Puerto Rico's Telephone Company Moves Into the Future;" *supra* at S19; PRTA 1994 Annual Report at Inside Cover.

C. Achievement of Universal Service in Puerto Rico Should be Addressed through the Commission Policies and Programs Intended to Promote Universal Service, Not through Continued Exemption from the Expanded Interconnection Requirements Applicable to All Other Tier 1 LECs

Lambda supports the objective of universal service and encourages PRTC to take steps to increase penetration levels in Puerto Rico. However, that objective would best be promoted through the Commission's universal service policies not by continuing to protect PRTC from local access competition and exempting it from the expanded interconnection requirements.

Currently, Part 36 of the Commission's rules provides for two sources of high cost assistance from the interstate jurisdiction for LECs who are subject to unusually high costs of service. These two sources of high cost assistance -- the Universal Service Fund and the weighting of Dial Equipment Minutes -- provide approximately one billion dollars annually in high cost support. The Commission is currently conducting a proceeding that addresses altering those programs to more accurately target those funds to promote universal service.[73] Also, the Commission recently has commenced a separate rulemaking proceeding wherein it has sought comment on a series of proposals in addition to high cost assistance which are intended to increase telephone subscribership throughout the United States, including Puerto Rico.[74]

---

[73]Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 95-282, (released July 13, 1995).

[74]Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched (continued...)

Several other existing Commission programs are available to PRTC to directly assist economically disadvantaged consumers in obtaining local telephone service, and thereby raise the telephone service penetration level. The Lifeline Assistance program provides for a waiver of the entire $3.50 per month residential federal subscriber line charge (up to an amount matched by the state or territory). Under that program, subscribers' monthly service bills may be reduced by twice the federal subscriber line charge (or more if the state or territory matches more than the federal portion).[75] Notwithstanding the low telephone service penetration in Puerto Rico, PRTC chooses not to participate in the Lifeline Assistance program, despite the fact that 38 states do participate in Lifeline.[76]

Another program, Link-Up America, was established to assist low income consumers meet the connection charge requirements necessary to obtain local service.[77] Under the Link-Up program, eligible low income subscribers receive assistance covering one-

---

[74](...continued) Telephone Network *Notice of Proposed Rulemaking*, FCC 95-281, released July 20, 1995 ("Telephone Penetration Notice").

[75]47 C.F.R. Part 36, Subpart G (47 C.F.R. §§ 36.701 *et seq.*). See also MTS and WATS Market Structure; Amendment of Part 69 of the Commission's Rules and Establishment of a Joint Board *Decision and Order*, 51 Fed. Reg. 1371 (1986).

[76]Telephone Penetration Notice, at ¶¶ 34-35.

[77]MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board *Report and Order*, 2 FCC Rcd 2953, 2955 (1987), *amended*, MTS and WATS Market Structure, Link-Up America, and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 4 FCC Rcd 3634 (1989).

half of the first $60 of telephone service connection charges. Where a LEC has a deferred payment plan, the Link-Up program will also pay the interest on any balance up to $200 for up to one year. Although PRTC does participate in the federal Link-Up program, the level of participation in PRTC's service area is far below that of many LECs operating in states whose populations are economically better off.[78]

These programs were created by the Commission and are adjusted periodically as part of the Commission's continuing efforts to work with the telephone industry and with the states and territories to promote the public interest objective of universal service. It is to these programs as well as to improved efficiency of its own operations that PRTC should look to increase the availability of telephone service in Puerto Rico.[79]

V. WHETHER OR NOT PRTC'S CONTINUED PARTICIPATION IN THE NECA POOL IS APPROPRIATE, PRTC SHOULD NOT BE PERMITTED TO RELY UPON THE NECA POOL TO AVOID THE EXPANDED INTERCONNECTION OBLIGATIONS APPLICABLE TO ALL OTHER TIER 1 LECS

The Commission's only articulated basis for its 1992 exclusion of PRTC from the expanded interconnection requirements was PRTC's

---

[78]Monitoring Report at Tables 2.2 and 2.3.

[79]PRTC's recent efforts to use Puerto Rico's low telephone penetration as a legislative basis for shielding its monopoly for five years from pro-competitive federal telecommunications legislation were rejected by both chambers of Congress. See H.R. 1555, 104th Cong., 1st Sess. (1995), and S.652, 104th Cong., 1st Sess. (1995). As the House and Senate versions of this legislation go to Conference Committee, neither version includes a provision exempting PRTC from the pro-competitive provisions.

participation in the NECA carrier common line pool. In doing so, the Commission stated as follows:

> We therefore adopt our proposal to limit the requirement to Tier 1 LECs. This would ensure the availability of expanded interconnection in most urban and suburban areas where demand is likely to be greatest. We also conclude that NECA pool members should be excluded from expanded interconnection requirements, at least for the present. Since the Puerto Rico Telephone Company is the only Tier 1 LEC that is also a NECA pool member, this is not much more restrictive than requiring all Tier 1 LECs to provide expanded interconnection.[80]

PRTC's continued exclusion from the expanded interconnection requirements is no longer appropriate, and that exclusion should be promptly ended irrespective of whether PRTC chooses to remain a NECA pool member. Given the uncertainty in 1991 as to how access competition and expanded interconnection would develop, the Commission's decision to create a PRTC exception at that time may have been understandable. At that time, there did not appear to be any interest in potential competitors serving the access market in Puerto Rico. That is no longer the case. Lambda stands ready, willing and able to invest the necessary capital and to enter Puerto Rico's access market. However, it is prevented from doing so by a 1991 Commission decision premised on PRTC's NECA pool membership.

Noting that PRTC was the only Tier 1 LEC that is also a NECA pool member, the Commission concluded that creation of that one exception was not much more restrictive than subjecting all Tier 1

---

[80] Expanded Interconnection, 7 FCC Rcd at 7398 (emphasis added).

LECs to the expanded interconnection requirements.[81] However, by excluding "that one Tier 1 LEC" from the expanded interconnection requirements, the Commission effectively has precluded any opportunity for competitive access providers or others to offer alternative access services to the millions of consumers, including business consumers, located in Puerto Rico, as well as to the interexchange carriers providing interstate and international service to and from Puerto Rico. Such preclusion of competitive opportunities was not the intent of the Commission either in creating the NECA pool, later allowing LECs to leave the pool, or in temporarily exempting PRTC from the expanded interconnection requirements.

Following the Commission's 1987 decision adopting a Federal-State Joint Board recommendation to allow LECs to withdraw from the NECA pool,[82] continued participation in the NECA pool has been a matter of choice for each LEC. Pool participation allows LECs to spread the risk of periodic increases in access costs and/or decreases in access revenues among all participants. It also allows pool participants to avoid the administrative costs of preparing and filing their own tariffs with the Commission. On the other hand, pool participation limits the ability of LECs to base their charges on their own carrier-specific costs, and it prevents participating LECs from availing themselves of the pricing

---

[81] Expanded Interconnection, 7 FCC Rcd at 7398.

[82] MTS and WATS Market Structure, 2 FCC Rcd 2953 (1987), *recon.* 3 FCC Rcd 4543 (1988).

flexibility afforded by the Commission to non-participants in the pool. In order to respond to competition, all Tier 1 LECs (except for PRTC) have withdrawn from the NECA pool, resulting in lower access rates for consumers. Virtually all smaller LECs have chosen to remain pool members.

Each LEC is therefore allowed to make its own decision based upon its own circumstances whether to participate in the pool or to file its own access tariff. Pool participation remains a vehicle for those LECs who do not perceive a need for pricing flexibility to spread their risk among many carriers and to avoid the administrative costs associated with access tariffs. Establishment of the NECA access pool was never intended to enable any LEC (not even PRTC) to avoid the challenges of access competition, and the obligations imposed by the Commission to allow expanded interconnection, in perpetuity by hiding behind that LEC's voluntary participation in the pool.

Whatever may have been the circumstances before the Commission in 1991, circumstances have changed since then. There is no reason why interstate access competition in Puerto Rico should be held hostage to PRTC's election to continue its pool participation. Should PRTC conclude that pool membership limits its ability to respond to competition, it has the same option available to every other LEC -- to exit the pool and file its own tariffs. Whether or not PRTC elects to do so is a management decision for PRTC. PRTC should no longer be allowed to exploit the Commission's rules and its NECA pool participation to insulate itself from the expanded interconnection requirements applicable to every other Tier 1 LEC.

CONCLUSION

As demonstrated conclusively herein, there is no justification for the continued exemption of PRTC from the expanded interconnection obligations currently applicable to all other Tier 1 LECs. The effect of the Commission's 1991 exemption of PRTC from the expanded interconnection requirements applicable to all other Tier 1 LECs is to preclude the opportunity for potential competitors, including Lambda, to bring the benefits of competitive access services to the business and residential consumers of Puerto Rico, and to insulate PRTC from the challenges of competition -- challenges which normally provide incentives to incumbents to increase their own efficiency.

Accordingly, for all of the foregoing reasons, Lambda urges the Commission to issue a notice of proposed rulemaking at the earliest possible time, and to extend the expanded interconnection requirement to PRTC as expeditiously as possible.

Respectfully submitted,

LAMBDA COMMUNICATIONS, INC.

By: Richard Rubin
Richard Rubin
Mitchell F. Brecher

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

Its Attorneys

September 29, 1995

29989

Appendix A

1994 Statistical Comparison

LEC	Access Lines (000)	Full Time Employees	Acc Line/ Employee	Op Rev ($000)	Op Rev/ Empl ($000)	Local Svc Rev ($000)	Local Svc Rev/Acc Line ($)	Op Expense ($000)	Op Exp/ Acc Line ($)
PRTC	1,118	7,852	142	960,066	122	433,245	387	739,057	661
All LECs	157,180	463,991	339	92,927,905	200	43,213,333	275	70,263,301	445
All RBOCs	129,106	360,658	358	73,368,906	203	35,758,637	277	55,916,863	434
Ind. Bell	2,223	4,370	509	1,155,605	265	534,038	240	879,911	396
Wis. Bell	2,242	4,605	487	1,113,132	242	515,259	230	878,200	392
Bell Atl.-NJ	5,513	13,505	408	3,333,071	247	1,163,145	211	2,379,623	432
Bell Atl.-WV	743	2,213	336	590,191	267	290,973	391	395,862	533
Nev. Bell	310	833	372	172,075	206	70,859	228	129,776	419
Cincinnati	899	3,307	272	597,386	181	329,269	366	451,395	502
SNET	2,009	9,063	222	1,453,503	160	596,064	297	1,119,708	547
GTE-FL	2,031	6,769	300	1,210,068	179	N/A	N/A	909,420	447
GTE-HI	694	3,134	221	538,088	172	N/A	N/A	466,967	673
GTE-Northwest	1,238	3,966	312	906,620	229	347,387	281	693,033	560
Rochester	505	1,691	299	309,584	183	149,439	296	213,102	422

SOURCE: FCC, Preliminary Statistics of Communications Common Carriers, Year End December 31, 1994, Tables 2.9, 2.10.